IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No.
	)	3:18-cr-00144
MARK BRYANT,	)	
	)	
Defendant.	)	

- -

BEFORE THE HONORABLE WAVERLY D. CRENSHAW, JR.
CHIEF DISTRICT JUDGE

TRANSCRIPT

OF

PROCEEDINGS

November 20, 2020

Sentencing Hearing

- -

APPEARANCES ON THE FOLLOWING PAGE

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I N D E X

Friday, November 20, 2020

INDEX OF WITNESSES

EXHIBITS

(None)

The above-styled cause came on to be heard on November 20, 2020, before the Honorable Waverly D. Crenshaw, Jr., Chief District Judge, when the following proceedings were had, to-wit:

THE COURT: All right. Be seated.

Good morning.

All right. So we're here on Case 18-144, *United States of America v. Mark Bryant*. And Mr. Bryant is in the courtroom.

If counsel can introduce themselves on the record.

MR. SONGER: Good morning, Your Honor. Mike Songer for the United States.

MS. MYERS: Sara Beth Myers on behalf of the United States.

MR. STRIANSE: Good morning, Your Honor. Peter Strianse of the Nashville Bar, here on behalf of Mark Bryant.

THE COURT: All right.

So, Mr. Bryant, we're here today for sentencing because on January the 10th of this year, the jury rendered a verdict finding you guilty on Counts One and Two of the superseding indictment charging you with two counts of deprivation of rights under color of law in violation of 18 U.S.C. Section 242. The same jury found you not guilty on Counts Three, Four, and Five.

The statutory penalty under Count One -- for Count One and Two, each, is a maximum term of ten years' imprisonment, a period of supervised release of not more than three years. Probation is authorized for a period of one to five years. And you're also subject to a fine up to $250,000, plus the mandatory $100 special assessment.

Do you understand you could be sentenced to the statutory maximums today?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. You all can be seated.

All right. In preparation for the sentencing, I've reviewed the superseding indictment. Of course, I'm familiar with the trial, both trials, as well as your sentencing position, Mr. Bryant, your sentencing memorandum, as well as your response to the government's objection to the presentence report. I've also studied and considered letters from family and friends, and coworkers, at Document Number 121, as well as the letters from your parents at Document 128, and one other family member, I think an aunt.

Additionally, I've reviewed the government's and studied the government's sentencing position, the government's sentencing memorandum.

Have you had a chance to review all of those documents?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. And you've had enough time to talk to Mr. Strianse in preparation for sentencing today?
THE DEFENDANT: Yes, Your Honor.
THE COURT: Do you want any more time to do that?
THE DEFENDANT: No, Your Honor.
THE COURT: All right. Thank you.
Also, I've reviewed the presentence report dated September 22nd, 2020.
Now, did you get your own copy of that presentence report?
THE DEFENDANT: Yes, Your Honor.
THE COURT: And read it from cover to cover?
THE DEFENDANT: Yes, Your Honor.
THE COURT: And, again, talk to Mr. Strianse?
THE DEFENDANT: Yes, Your Honor.
THE COURT: And asked him questions, to the extent you had questions?
THE DEFENDANT: Yes, Your Honor.
THE COURT: All right. Thank you.
And, finally, I'll note for the record that a related case, Gary Keith Ola, who has pled guilty and is awaiting sentencing, I think that's scheduled in December.
I understand that, Mr. Strianse, you have no objections to the presentence report?
MR. STRIANSE: That's correct, Your Honor.

THE COURT: And the government has one objection that's been outlined in the papers, which I've read.

Does the government want to present any evidence or make any further argument on that objection?

MR. SONGER: No, Your Honor. I think our position is laid out in the papers we submitted.

THE COURT: All right. So the government has objected to the guideline calculation in the presentence report because it does not include a two-level enhancement under Section 3C1.1 of the sentencing guidelines to reflect Mr. Bryant's failure to admit to FBI agents that he tased Jordan Norris while Mr. Norris was restrained.

Mr. Bryant was interviewed by an FBI agent on August the 2nd, 2017, about the tasing of Norris on November 5, 2016. Mr. Bryant denied tasing Norris at approximately 10:20 p.m. while Norris was restrained in handcuffs, a belly chain, and leg shackles and in the process of being transported for medical care. The event was captured on videotape. It showed that Mr. Bryant, in fact, tased Norris, and other evidence established that the tasing lasted at least 11 seconds.

Count Two of the superseding indictment charged Mr. Bryant with use of unreasonable force at 10:20 on November 5, 2016, constituting punishment in violation of Mr. Norris's constitutional rights. At the second trial, the

jury unanimously found Mr. Bryant guilty on Count Two. The same jury found Mr. Bryant not guilty on Count Five that charged him with a violation of 18 U.S.C. Section 1001 based upon his denial to the FBI of tasing Norris on that date and time.

The government believes that Bryant's false denial on August 2, 2017, of his actions on November 5, 2016, constitutes obstruction of justice because it obstructed or impeded the FBI's investigation. The government reasons that the FBI agent questioning Bryant on August 2nd, 2017, was not, quote, aware he had tased someone, end quote, in handcuffs at 10:20 p.m. So the, quote, FBI agent did not ask Bryant questions about his justification for tasing and determine whether Bryant had acted willfully, an essential element of any 18 U.S.C. Section 242 violation, end quote, charged in Count Two.

The government further argues that, quote, Bryant's false statement was an especially potent obstacle to the federal prosecution in this case where assessing whether Bryant acted willfully was a key component of the government's case. See Document Number 127 at 11.

The government is correct that sentencing guideline Section 3C1.1 adds two levels to the defendant's offense conduct calculation when the defendant, quote, 1, willfully obstructed or impeded or attempted to obstruct or

impede the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and, 2, the instructive conduct related to, A, the defendant's offense of conviction, and any relevant conduct or, B, closely related offenses.

The commentary in the application notes guide the proper application of Section 3C1.1. Application Note 5B explains that Section 3C1.1 does not apply to false statements not under oath to law enforcement officials, like Mr. Bryant's false statement not under oath to the FBI agent on August 2, 2017, unless the false statement falls within application note 4G.

That application note directs the Court to apply a two-level enhancement to the offense level calculation when the defendant provides, quote, a materially false statement to a law enforcement officer that significantly obstructed or impeded the official investigation or prosecution of the instant offense, end quote.

The Court agrees that the government's objection turns on whether Bryant's false statement to the FBI agent on August 2, 2017, about his actions on November 5, 2016, quote, significantly obstructed or impeded, end quote, the FBI's investigation of the instant offense. To be sure, Bryant's false statement did not actually obstruct the investigation or prosecution because the videographic evidence and witness

testimony directly contradicted his lie.

Sixth Circuit case law applying Section 3C1.1 sets several boundaries to determine whether a false statement, quote, significantly obstructed or impeded, end quote, an official investigation. The first boundary point is that simply lying to law enforcement is not enough to qualify for the enhancement in Section 3C1.1. Instead, the lie must, quote, substantially interfere with or substantially retard the investigation. See *United States v. Brown*, 857 F.3d 334 at 341, Sixth Circuit, 2017, citing *U.S. v. Carter*, 510 F.3d 593 at 598, Sixth Circuit, 2007.

The defendant's lie must have an objective adverse impact on the government's investigation for the enhancement to apply. See *U.S. v. Brown*, 857 F.3d at 342. For example, when the false statements to the government investigator causes the government to engage in further investigation and further investigation causes delay that results in expiration of the criminal statute of limitations, then there is a significant impact to the investigation to merit application of Section 3C1.1's two-point enhancement. See *U.S. versus Carter*, 510 F.3d at 598 through -99.

The next boundary stake is that Section 3C1.1 requires that the defendant's lie -- misrepresentation must be in -- must be in some type of active material -- must be -- must be an active material false representation. This

was illustrated in *United States v. Obie*, 195 F.App. 335, Sixth Circuit, 2006. In that case, the defendant made statements about his use of drugs that caused the government's investigation to shift in a different direction away from the defendant. The Sixth Circuit held that the defendant's lie was only a, quote, failed attempt to shift the investigation, end quote, not legally sufficient for the Section 3C1.1 enhancement. The Court's reasoning was, quote, the focus of Section 3C1.1 is on whether the defendant, by actively making material false statements and not by a passive refusal to cooperate, succeeded in significantly impeding the investigation, end quote. See 195 F.App. at 339.

The Sixth Circuit cited another published decision, *United States v. Williams*, 952 F.2d 1504, Sixth Circuit, 1991. That case arose from this very court, which provides the final boundary plot for the Court's decision here. In *Williams*, Judge Thomas Higgins, in whose courtroom we now sit, applied the enhancement in Section 3C1.1 because, like Mr. Bryant, the defendant told material falsehoods to government agents during the official investigation.

The Sixth Circuit reversed Judge Higgins, even though the defendant admitted to major -- quote, unquote, major lies -- to the FBI and TBI because the lies did not significantly obstruct or impede the investigation.

The appellate court found dispositive the defendant's lies hardly impeded the investigation because the FBI and TBI had tape and video recordings and the cooperation of others that clearly verified the defendant's criminal conduct, his lies notwithstanding.

The Court's analysis in *Williams* squarely addresses the government's arguments here about Mr. Bryant's failure to be truthful to the government. Government argues that, quote, while it is correct that federal investigators eventually developed overwhelming evidence of Bryant's actions, multiple videotapes and cooperating witnesses, Bryant's mental state during the assault remained a sharply disputed issue at trial, a dispute that could have been resolved if Bryant had not lied during the FBI interview. See Document 127 at 11.

This Court adopts the words of the Sixth Circuit in *Williams*. Quote, Indeed, it seems that the government's real argument is not that Defendant succeeded in misleading anyone, but that his failure to confess and cooperate with the government when first approached required the government to continue an investigation that might otherwise have been shortened, end quote, 952 F.2d at 1515.

This is precisely the circumstances in this case. FBI Agent Joy Wright testified at trial that she started her investigation into the events on November 5, 2016, regarding

Norris on August 2nd, 2017, when she interviewed Mr. Bryant. At that time she had not reviewed all of the, quote, multitude of documents, end quote, she was in the process of collecting, which included incident and use of force reports, Taser log reports from 2014 to 2017, personnel files, and multiple videotape recordings of Norris in the Cheatham County Jail. She was just beginning to learn the circumstances of the events involving Norris.

When Bryant didn't tell her about the 10:20 p.m. event and his tasing of Norris, she lost the opportunity to ask him more questions about that particular tasing. The multitude of documents clearly disclosed the 10:20 p.m. event. The video recording provided a realtime account of the 10:20 event, and witnesses gave their story of the event. The 10:20 p.m. event and Bryant's actions became clear, and Agent Wright could have followed up with Bryant to get his side of the event.

At best, the government's investigation was delayed because Mr. Bryant did not reveal his actions during the August 2, 2017, interview, but, as in *Williams*, this does not and did not significantly impede the investigation. Indeed, the videotapes were practically conclusive, and Bryant's false statements on August 2, 2017, fooled no one.

The Court finds that Bryant's false representation did not significantly obstruct the investigation, so the

government's objection is overruled.

And with that, I will accept the facts contained in the presentence report as true and rely upon them for purposes of sentencing today.

So, Mr. Bryant, the first thing we have to do is calculate the sentencing guideline. It starts with a base offense of 14, because the underlying offense here is aggravated assault, and the applicable guideline for aggravated assault, Section 2A2.2 provides that base offense level.

We add four points for the use of a Taser, a dangerous weapon, that you utilized during the assault of the victim.

Three additional points are added for injuries to Mr. Norris because of bodily injury to him. He sustained welts, burns, and bruises to his body.

Six points are added because at the time of the offense you were a public official, the offense was committed under color of law, and the offense is increased -- and at the time you were a correctional officer at the Cheat- -- for the Cheatham County Sheriff.

Two additional points are added because the victim was physically restrained in the course of the offense. He was physically restrained in a restraint chair or otherwise restrained in handcuffs and shackles.

Two more points are added for the multiple-count adjustment pursuant to Section 3D1.4. And that gives a final offense level of 31.

You have no criminal history points, so that's set at Criminal History I. And, according to the guidelines, they suggest to the Court and advise the Court that a total offense level of 31 and a criminal history category of I results in a sentencing range of 108 to 135 months' imprisonment. However, here, the statutory maximum for both counts of conviction is 120. So the sentencing guideline is really 108 to 120 months.

Does the government have any objection to the guideline calculation?

MR. SONGER: No, Your Honor, none other than the previously discussed obstruction enhancement.

THE COURT: All right. Does the defense?

MR. STRIANSE: No, Your Honor.

THE COURT: So let me go ahead and address -- do you have any argument on the request for departure?

MR. STRIANSE: Your Honor, I have a little bit of proof and some argument.

THE COURT: Okay. On the departure request?

MR. STRIANSE: They both relate to the variance.

THE COURT: All right.

MR. STRIANSE: Shall I go forward?

THE COURT: Sure.
MR. STRIANSE: Call Harley Durham.
COURT DEPUTY: Please raise your right hand.

HARLEY DESTINY ALEXIS DURHAM,
called as a witness by Defendant, was duly sworn and testified as follows:

COURT DEPUTY: Please be seated.
Please be sure to speak into the microphone.
State your full name and spell your last name.
THE WITNESS: Harley Destiny Alexis Durham. D-u-r-h-a-m.

DIRECT EXAMINATION

BY MR. STRIANSE:

Q. Good morning, Ms. Durham.
A. Good morning.
Q. Where do you live, ma'am?
A. Ashland City.
Q. In Cheatham County?
A. Yes, sir.
Q. And how are you currently employed?
A. I am a certified teaching assistant at Cheatham Middle School and a part-time dispensing optician and eye doctor in

Nashville.
Q. And do you know the defendant in this case, Mark Bryant?
A. Yes, sir.
Q. And if you would, tell the judge how you know Mark.
A. We worked together at the jail and we're friends.
Q. Do you remember when you worked with him -- when you say "the jail," you mean the Cheatham County Jail?
A. Yes, sir.
Q. Do you remember when you worked with Mr. Bryant at the Cheatham County Jail?
A. From 2015 until 2017.
Q. And you all overlapped for about how much time?
A. I think just a couple months.
Q. What was your job at the Cheatham County Jail?
A. A correctional officer.
Q. And what was Mark's position when you all worked together?
A. He was my supervisor.
Q. During the time that you worked with Mark Bryant, do you feel like you got to know him?
A. Yes, sir.
Q. And have you continued a personal relationship with Mr. Bryant after you both left the Cheatham County Jail?
A. Yes, sir.
Q. You remain in contact with him through today; is that

right?
A. Yes, sir.
Q. Tell the judge a little bit about the Mark Bryant that you came to know, both by working with him and developing a personal relationship with him.
A. Yeah. Mark is a fantastic guy. He's funny, which is one of the reasons why we're such good friends. He's very compassionate. He's knowledgeable, patient, and just an overall great person.
Q. Now, you're married; is that right?
A. Yes, sir.
Q. And has your husband come to know Mark Bryant?
A. Yes, sir.
Q. And does he consider Mark a friend as well?
A. Absolutely.
Q. Tell the judge a little bit about how you saw Mark Bryant perform as a correctional officer at the Cheatham County Jail.
A. So Mark was -- he had worked at a previous facility. I've never worked at a jail before up until then. And he was very patient with working with me. He answered any questions that I had. He told everybody on second shift to "use your words."
Q. And what did that mean, "use your words"?
A. When there was anything going on with the inmates, there

was an angry inmate or there was a fight, you use your words, you deescalate the situation. We -- he tried -- other shifts used use of force more than we did because we were able to apply that to any situation going on.

Q. In the correctional world, in that vernacular, are you familiar with the phrase "go hands-on"?

A. Yes, sir.

Q. And what does that mean?

A. That just means if you have to put hands on an inmate to subdue them, separate them, or get them to comply.

Q. Was Mark Bryant a "go hands-on" kind of correctional officer?

A. No.

Q. When we were talking about your testimony, you indicated that you were really frustrated the way that Mark Bryant has been portrayed throughout the last four years.

What did you mean by that?

A. He was being portrayed as a monster and somebody who just doesn't have any consideration for what he does. That's not Mark. Mark is a fantastic person. And the way that everybody is making him out to be is unbelievably untrue.

Q. Did you ever know Mark Bryant to be a violent person?

A. No.

Q. Do you think that, whether the Court places Mr. Bryant ultimately on supervised release or considers probation in

this case, that he's the kind of individual that would follow the orders of the Court?
A. Absolutely.
Q. Do you think he would comply with every request that was made of him?
A. Absolutely.
Q. What effect has all of this had on Mark Bryant?
A. It's really hard to say because Mark is just such a positive person. He understands the consequences, but he is very positive about it. He doesn't let it get him down. We just -- we don't talk very much about it because he understands that it upsets me more than anything.

MR. STRIANSE: Thank you, Ms. Durham.

THE COURT: All right. Cross.

CROSS-EXAMINATION

BY MS. MYERS:
Q. Good morning, Ms. Durham.
A. Good morning.
Q. So, Ms. Durham, you were not there to witness the defendant's behavior on the night of November 5th, 2016?
A. Correct.
Q. And so you did not witness the defendant use a Taser to shoot electricity into Jordan Norris's body?
A. Correct.

MS. MYERS: I have no further questions.
THE COURT: Any redirect?
MR. STRIANSE: No, Your Honor.
THE COURT: All right. Thank you for being here.
(Witness excused.)
THE COURT: All right. Go ahead.
MR. STRIANSE: Call Virginia Bryant.
COURT DEPUTY: Please raise your right hand.

VIRGINIA KAY BRYANT,
called as a witness by Defendant, was duly sworn and testified as follows:

COURT DEPUTY: Please be seated.
Please be sure to speak into microphone.
THE WITNESS: Yes, I will.
COURT DEPUTY: State your full name.
THE COURT: You can remove your mask if you like.
COURT DEPUTY: Can you state your full name.
THE WITNESS: My name is Virginia Kay Bryant.
COURT DEPUTY: Can you spell your middle name.
THE WITNESS: K-a-y.

DIRECT EXAMINATION

BY MR. STRIANSE:
Q. Good morning, Mrs. Bryant.

A. Good morning.
Q. You are, of course, the mother of Mark Bryant; is that right?
A. I am.
Q. Tell the Court a little bit about yourself.
A. Well, I worked at Jostens Printing and Publishing for 23 seasons, making yearbooks. And after that time, I went into the banking business. I worked at Cornerstone Financial Credit Union as a customer service representative and as the vault teller for a time.
Q. How old is your son Mark?
A. Mark is 42 years old.
Q. Tell the judge a little bit about how you and Mr. Bryant raised Mark.
A. We raised him in a Christian home, based on Christian principles. We attended church faithfully, Sunday school, worship, and Bible study on Sundays. And Wednesday night Bible study for all ages. And he attended all those -- those church services with the whole family. And so we tried to instill in him the values contained in Christianity: Kindness, helpfulness, concern for others.

His -- his manner of dealing with people was so gentle and kind that a group of the -- what I call the little old ladies at church just adored him. He would speak with them. He would hold the door for them. He -- some of them

taught him in Bible classes. And he was a favorite of theirs.

Q. Would you characterize your family as a close-knit group?

A. Oh, absolutely. We're very close knit.

Q. I want to talk a little bit about Mark when he was a young man.

Where did he go to school?

A. He went to school in the public school system at Norman Smith School at Greenwood and at Clarksville High School for one year. He attended a small private school for two years, but after the two years, he decided that he no longer wanted to be on a college prep course. So he went back into the public school system where he could work as a co-op student.

Q. And as a young man, as a student, did he involve himself in sports and athletics?

A. He did indeed. He played youth soccer. He played football in junior pro, middle school, and high school.

Q. What can you tell the judge about his work ethic?

A. Mark is a very hard worker. It was very difficult for him not to be able to work for a time after he left the Cheatham County Sheriff's Department. But he worked very hard at finding a job, and he did find a job where he worked for some period of time washing trucks.

And after that, he was invited to apply with a

company that cause- -- that maintains internet infrastructure, and rose quickly through the ranks in that endeavor. Had to learn a lot of things that he had never learned before, but he is highly thought of by his supervisors and actually has some supervisory duties in that job.

Q. Did Mark begin working at a very early age?

A. Our family had a job of cleaning the large church building where we went to church. And so we took over that job when Mark was seven. So at seven, there wasn't a lot he could do, but he did drag a large wheeled trash can around the building, and he went in all the classrooms and the offices and the bathrooms and emptied the trash cans in those rooms into his big can.

Of course, as he grew older and was able to do more things, he did take on more duties in that job.

Q. Did he work in high school?

A. In high school, he went to work at a car wash, and he -- as I said before, he went back into the public school so he could work as a co-op student. He had two classes a day, and then the rest of the day he spent working at the car wash. Eventually, he was made assistant manager at that car wash.

Q. Did he purchase his own home at a young age?

A. He did. He was able to qualify for a mortgage by his work at the car wash, and four months after he turned 18, he

bought his own house, which he still owns.
Q. Lives there today; is that right?
A. Yes.
Q. You've come to both trials; is that right?
A. Yes, sir.
Q. Why don't you describe for the judge the kind of person that your son is.
A. He's the kind of person that doesn't push himself to the forefront or try to draw attention to himself. He's reasonably quiet. He's very calm in his dealings. If he sees someone's in need, he's always willing to help. For example, I have a friend who broke her arm a couple years ago, and she -- the break was so severe that she had to have a rod put into her dominant arm.

When I told Mark about it, he said, "Well, I don't know much about gardening, but if she needs any heavy lifting done, I certainly can do that." So he did end up going to her house, moving some heavy pots up closer to her back porch so she would be able to garden that season, and emptied heavy 40-pound bags of potting soil into them. She was delighted because she was able to do some gardening that she didn't think she was going to get to do that season.

Also, he took note of the fact while he was there that she had two staircases going down from her back porch. And neither one had a handrail. So he came back on another

day and made two handrails for her so that she could go up and down her stairs safely.

Mark didn't know her. He had never met her. But she was my friend, and she was in need. So he was happy to help.

Q. Is that your friend Linda Earp?

A. Yes.

Q. And she wrote a letter on Mark's behalf --

A. She did.

Q. -- is that right?

A. She did.

Q. And your husband is here today; is that right?

A. That is correct.

Q. And he accompanied you to both trials; is that correct?

A. Yes, indeed.

Q. And I don't want to embarrass you or embarrass him, but has he over the years suffered from some physical and mental infirmities?

A. He has a mental health issue with anxiety and depression that has been quite treatment resistant and is now of 30 years' duration.

Q. And forgive me for asking you this. How old are you?

A. I'm 69.

Q. And how old is your husband?

A. He also is 69.

Q. As you all have -- have gotten older, has Mark taken a greater role in helping with your husband?
A. He has. Mark has a very calming effect on his dad, and they try to spend time together from time to time, and actually they, with another person, built us a house at the lake. So it was a great time for my husband. He so enjoyed working with Mark and seeing how exacting he was in his construction work and how meticulous he was, and just that he knew a lot. He wouldn't even let me buy a set of plans to build the house. He said, "I don't need it. I know what to do."
Q. You said that your son has a calming effect on your husband; is that right?
A. Yes.
Q. And you've been in the courtroom through those two somewhat long trials.
A. Yes.
Q. And you saw how he was characterized by the government in this case?
A. I did.
Q. Is -- is your son a bully?
A. Not at all. He weighed 10 pounds, 2 1/2 ounces, at birth. He's been big from the beginning. He was always the biggest, the tallest kid in his school classes. But he never bullied anyone. And in fact, he decided early on that he

didn't have much use for bullies. So not only did he not bully, but he spoke up for people who were being bullied and, as he said, showed up big and took care of the situation in such a way that the person who was being tormented was relieved of their tormenter.

Q. Have you ever known your son to be a violent person?

A. Not at all. He's very calm and very laid back. He -- he faces life with kindness and positivity and good humor.

Q. Over the years have you found him to be a trustworthy and dependable son?

A. Absolutely. Absolutely. We have chosen him to be executor of our will, so that speaks to how much we trust him.

Q. By the way, who is here on Mark's behalf from the family?

A. From the family, his two older sisters, his dad, and myself.

Q. After he lost his job at the Cheatham County Jail, you said it took him a while to get back to work; is that right?

A. Yes, sir. A few months.

Q. You told the Court about him washing trucks or something like that?

A. Yes.

Q. When did he get this much better job involving the broadband internet?

A. I think he's been working at that job about two and a half years.
Q. How does that job suit him?
A. It suits him right down to the ground. He works by himself in a room where all the equipment for the broadband and internet wiring is, and he performs upgrades and repairs to those elements.
Q. And with the pandemic, has he been classified as an essential employee with that company?
A. He has been. In fact, he had to carry a notice, a government notice, in his vehicle so that he would not be stopped for being out and about during lockdown times that stated that he was an essential worker.

MR. STRIANSE: Thank you, Mrs. Bryant.

THE COURT: All right. Cross.

MS. MYERS: No questions, Your Honor.

THE COURT: All right. Thank you for being here.

THE WITNESS: Thank you, sir. Thank you for the opportunity.

(Witness excused.)

MR. STRIANSE: Your Honor, Mr. Bryant would like to address the Court at the appropriate time.

THE COURT: All right. I think we can do that. I think the government had three witnesses? Correct?

MS. MYERS: That's correct, Your Honor.

THE COURT: All right. Do you want -- let's go ahead and do those.

MS. MYERS: Yes.

Yes, Your Honor. They are not witnesses, but they would like to make victim impact statements.

THE COURT: Okay. Come forward.

MS. MYERS: Your Honor, this is Mr. Chapman.

MR. CHAPMAN: May I remove?

THE COURT: Sure. Please. Thank you. And if you would state your name.

MR. CHAPMAN: Pardon?

THE COURT: Would you state your name?

MR. CHAPMAN: William Chapman.

THE COURT: And where do you live?

MR. CHAPMAN: I live at 118 Sweeney Drive, Pegram, Tennessee.

THE COURT: All right. Welcome.

MR. CHAPMAN: Again, my name is William Chapman. I'm a transportation supervisor at Vanderbilt University. I am Jordan Norris's biological uncle and was his custodial parent from 2010 until his passing in 2018.

Throughout the Court proceedings, much was stated and alleged by Cheatham County authorities that Jordan was a violent person, accusing him of hitting, kicking, biting, and spitting, that somehow he brought this torture and abuse by

Mark Bryant on himself. Nothing could be further from the truth. Not once in the video are any of those actions seen. In fact, the only violent assault witnessed in the videos is committed by Mark Bryant himself.

This was the first time Jordan had ever been to jail. Whether as a juvenile or as an adult, Jordan had never assaulted anyone, threatened anyone, or committed any violent offense whatsoever. He was not a violent monster, as Mr. Bryant's defense attempted to portray. Jordan was an 18-year-old kid at heart who was soft-spoken, gentle in nature, and was respectful and courteous to others. He did not, nor would anyone else, deserve to be repeatedly assaulted with excruciating and potentially deadly high-voltage shocks.

The harm done to him that day did not end there. Jordan had pairs of burns scattered all over his body as witnessed by myself and others while he was still in custody. Some of those burns were second and third degree, which became infected and required treatment to help them heal.

The change in Jordan's personality was instantaneous. He became extremely emotionally disturbed. In the initial days he cried very easily when we discussed what he had endured and appeared to me to have a broken spirit.

He complained frequently of severe chest pain and

began to have daily panic attacks. There were many, many days where he experienced three or four panic attacks per day. We would be quietly watching TV or sitting out in the yard, and he would suddenly and without warning shut his eyes tightly, put his hands over his ears, and had a terrified look on his face. He would repeat over and over, "I'm having a panic attack." I felt helpless because there was nothing -- sorry -- I could do to make it stop. It would last two or three minutes and go away just as quickly as it came. On one occasion I checked his pulse and it was 128, a sitting pulse, in the midst of this attack.

He began to have frequent nightmares, saying they weren't just normal nightmares. He would say he didn't even want to describe them to me, they were so bad. At no point in his life had he ever talked about anything like that.

About four months after the tasings, he had his first grand mal seizure and was unconscious for nearly an hour. Paramedics were called, and he spent several hours in the emergency department at Vanderbilt.

His chest pains became worse over time, and he complained that he thought he was going to have a heart attack, an 18-year-old kid.

Throughout this time, I was taking him for medical checkups and began the quest to secure a good psychologist to help him with these developing mental and emotional

disturbances. He would periodically fall into a deep and prolonged depression and would spend days in his room without ever wanting to leave. He was given several prescriptions by his doctor for depression, insomnia, anxiety, and even a drug to help him alleviate the nightmares. I remember thinking it was odd there was a drug specifically for reducing nightmares.

Substance abuse became a serious concern as the months passed, and in March of 2018, I learned that he had begun using a deadly substance. Within two weeks of that realization, Jordan passed away in his own bed. The autopsy that followed revealed significant physical damage to Jordan's young heart, which explained the chest pain and the fear of a heart attack. Repeated shocks at high voltage is the only plausible explanation for that physical damage.

When an 18-year-old states that he believes he's having a heart attack, you want to rationalize it as something else. Even his doctor tried to pass it off as possible indigestion or stress. He never ordered tests that would have revealed what an autopsy eventually revealed: Jordan's heart was damaged by what Mark Bryant callously did to him. The seizures, the panic attacks, the nightmares, the crying, and the burn scars ever present as a reminder of what he endured. Jordan Elias Norris, 18 years old, as he sat strapped in that chair, completely immobile, unable to defend

himself in any way, did not deserve to have his life reduced to what it became. No one would deserve that.

Mark Bryant's actions that night were torturous, callous, and heartless, and brought on months of suffering. And, as attested by a jury of his peers, those actions are indefensible. Thank you, Your Honor.

THE COURT: All right. Thank you for being here.

Okay.

MS. MYERS: Your Honor, I believe that that is going to be our only victim who is going to be testifying.

THE COURT: Okay.

All right. Okay, then, why don't we have argument. If Mr. Bryant wants to speak now, or if you want to argue and then hear from the government, then you can have the last word.

MS. MYERS: Excuse me, Your Honor. May I have one minute to confer with our victim/witness coordinator?

THE COURT: Sure.

(Respite.)

MS. MYERS: Your Honor, his older sister, Ms. Argylene Suzanne Darnell, would also like to make a victim statement.

THE COURT: All right. Come forward.

And what's your name?

MS. DARNELL: Argylene Suzanne Darnell.

THE COURT: I'm sorry?
MS. DARNELL: Argylene Suzanne Darnell.
THE COURT: Can you spell the first name?
MS. DARNELL: Yes, A-r-g-y-l-e-n-e.
THE COURT: And the last name is Darnell?
MS. DARNELL: Yes, Darnell.
THE COURT: Welcome. Go ahead.
MS. DARNELL: I didn't have anything prepared. However, I do understand that we're all upset over him possibly going to jail and my brother being gone. I am the oldest of five siblings. I have a 28-year-old daughter that adored my brother. I have a ten-year-old daughter that would have loved to got to know him more.

My family is shattered. I suffer from PTSD, depression, anxiety, and I've heard that brought up for everybody else. And I also understand that my brother got in trouble, but I also understand, had I done the things that had happened to my brother, I would be in jail. Had I tased somebody and almost killed him, I would be in jail. And that's all I want, is the same justice that I would have gotten.

He was a good boy. I trusted him with -- I would have left him with my child. There's nobody going to sit here and tell me he was a mean and violent person, not the smile that he gave me and the hugs that I had around my neck.

I was here when he was brought into the world, and I would have loved to have spent more time with him.

And, like I said, my family is shattered. And I just want the same thing anybody else would have gotten. He was a good boy. He didn't deserve this. And I don't think Mr. Bryant's family deserves all this either, but he made his own choices. We all -- we can either come up a good family or a bad one and it's still the choice you make when you grow up. And he made the wrong one.

I can't say I've always made the right one, but I've never, in the same 43 years that he's been alive, ever been in trouble for violence or anything else. However, I was brought up in a violent home, but statistically, he should have been a better person and I should have been a worse. So we can worry about statistics or we can just worry about what we did wrong and what we didn't do wrong.

I don't want to see him just walk away. It's not fair to my family. It's not fair to my brother that's no longer here. He was a good boy. He really was. And that's all I've got to say.

THE COURT: All right. Well, thank you for being here. Okay.

MS. MYERS: And, Your Honor, I believe that is the final statement.

THE COURT: All right. So, Mr. Strianse, do you

want to make argument?

MR. STRIANSE: Yes, sir.

THE COURT: Then we can hear from Mr. Bryant, and the government can have the last word.

MR. STRIANSE: Thank you, Judge.

Your Honor, the Court has had the benefit of my filing on the analysis of the 3553(a) factors. And I don't want to belabor that, but there are a few things that I did want to bring to the Court's attention and highlight.

I've identified six potential bases for the Court to consider for a variance from the guideline range in this case, which seems to be facially a very high guideline range to me. The way the guidelines are structured, it seems like there is this factor creep that gets us up to a 31.

The issues that I identified for the Court in my papers are his outstanding work history, the wrongful conduct of the victim.

And so the family of Mr. Norris knows, this is not something that I've come up with, "wrongful conduct of the victim." It's something that's recognized in the sentencing guidelines and recognized as a possible basis for a variance.

I tried to develop with his mother his role as an irreplaceable caregiver for his 69-year-old father, who suffers from anxiety and depression.

I've tried to identify through the letters and

testimony his good works and service to the community.

In doing my research and preparing for this sentencing, there were things that I -- I guess innately knew, but saw some case law on it in terms of being a correctional officer, possible susceptibility to abuse in prison.

And also something that I had been talking to this Court and the state court about, the successive state prosecution for the identical conduct has been identified by sentencing courts as an additional burden on a criminal defendant.

Your Honor, on the outstanding work history, I think it's pretty remarkable. You heard the testimony of his mother. He literally began working as a child at age seven when his parents had that contract to clean that church. He worked through high school, and pretty remarkable -- I don't know if I've ever met anyone that was able to work, save money, make a down payment on a home at age 18, where he currently still lives.

On the whole issue of the conduct of Jordan Norris and the contributing factor that I think it has in this case, I say this respectfully, lost in all of this, these two trials and the hearings and everything that we've been through is Mr. Norris's role in this. And I don't want to say anything to hurt the family, but I'm just talking about

what is objectively seen on the video. And I think that what you see is someone that really instigated all of these issues that began at about 6:00 on November the 5th of 2016.

I think the testimony that you heard at both trials, the letters that you've read, the testimony that you heard today, Mark Bryant was not the kind of correctional officer that was looking for a confrontation on November 5, 2016. That was not his nature. You've heard, whether they were government witnesses, correctional officers, or people that I advanced at both trials, that was simply not his nature, and it's really -- runs contrary to everything that's been said about the style that he tried to employ as a correctional officer at the Cheatham County Jail.

And I think the Court can form a judgment about some of the problems that existed at the Cheatham County Jail. A very old facility. I think it was built in the 1940s. It was designed to house far fewer inmates on a Saturday night, which November 5, 2016, was. It was really filled to the brim, 150 to 200 inmates in a facility that was just not equipped to handle that many inmates. And basically you have a handful of correctional officers who are charged with the responsibility of trying to keep each other safe and keep that community of almost 200 inmates safe.

You saw from the video the shabby conditions at the jail. You saw this restraint chair, which was really a

source of a lot of problems that night, November the 5th, 2016, because they were simply unable to get Mr. Norris under control. And then you know the rest of the story because you've heard the proof and you saw the events of that night that lasted several hours.

Sentencing Guideline 5K2.10 allows for, in an appropriate circumstance, a downward departure, they call it -- I'm calling it a variance -- from this guideline range. And then I'm reading from 5K2.10. Quote, if the victim's wrongful conduct contributed significantly to provoking the offense behavior.

And then there were certain factors that 5K2.10 suggests that a sentencing judge should take a look at: The persistence of the victim's conduct; efforts by the defendant to prevent confrontation -- I think that was present in this case; the danger reasonably perceived by the defendant, including the victim's reputation for violence.

You know, they didn't know much about Jordan Norris that night, other than the way he was acting. And the Court may remember, in advance of the first trial, I tried to get into -- I guess you could characterize it as similar act evidence, 404(b) evidence. But the upshot was that the Court, I think, heard some proof on it and heard argument, decided it was not appropriate for the trial jury to hear, but I think it's instructive on this issue of wrongful

conduct.

You may remember a Corporal Shaffer, now a Sergeant Shaffer, who had dealt with Mr. Norris, not on November the 5th, but on Monday, November the 7th, on two different occasions.

And, for the record, you're shaking your head. So I think you have some --

THE COURT: I remember.

MR. STRIANSE: -- recollection.

Then I will not belabor it. But they --

THE COURT: Oh, no. You can argue it. I'm just saying I remember it.

MR. STRIANSE: Two events on November 7th, 2016, one at -- this was the early morning hours of November 7th, 2016. At 3:30 a.m., Sergeant Shaffer observed Mr. Norris assault another inmate, Dustin Newland -- and for the court reporter, that's N-e-w-l-a-n-d -- in Cell 2. Cell 2 is not one of the cells that had the hard steel door where it's hard to look into the cell; it's a cell that has bars. He clearly saw the assault. Mr. Newland sustained a loss of a tooth; he had a front tooth knocked out.

Later, 20 minutes later, 3:50 a.m., they were transporting Mr. Norris to the Middle Tennessee Mental Health Institute. You may remember, Judge, on the 5th he was taken to the local hospital, returned to the Cheatham County Jail;

they made arrangements to take him to the Middle Tennessee Mental Health Institute, given all of his conduct, and all of the bizarre behavior, and this was the transport morning at 3:50 a.m.

And Shaffer's report and his testimony would have been that that morning, when they were trying to get him transported, he was grabbing at Field Training Officer Burney's hand. They had to subdue him to get him into the car. It took five road officers to get him into the car, again demonstrating really extreme strength, and he kicked out the back passenger window of that vehicle.

So this is the individual that the Cheatham County Jail was dealing with from November 5 through November the 7th. I think that under this guideline departure and under this theory of variance, I think the Court can take into consideration whether this is a mitigating circumstance. I respectfully suggest to the Court it is a mitigating circumstance and, in this case, a powerful mitigating circumstance.

The other issue is the irreplaceable caregiver. You've heard the testimony of Mrs. Bryant. It's supported by the case law that I cited in my papers. The *Koon* case that I cited to the Court talked about susceptibility to abuse for a correctional officer as being a valid reason for a variance or a downward departure under the guidelines. And

remarkably, when I did my research, I found some case law that supported what I had been concerned about, the successive prosecutions.

We had in this case both sovereigns working together to prosecute both cases. I realize that there is no double jeopardy protection, but you have a situation where you have this concerted effort by both sovereigns to bring not only charges to the United States District Court, but also to the Criminal Court for Cheatham County. And in the cases that I cited, they did find that that can be a really undue burden on a criminal defendant and can be a mitigating circumstance.

Your Honor, based on all of those reasons, I would ask the Court to consider a mitigated sentence in this case. And I don't want the Court to think that I've lost leave of my senses when we're starting with a guideline range of 108 to 135 months, but you announced at the beginning of the -- this process this morning that he is statutorily eligible for probation. And I know the Court is very considerate -- very familiar with the *Gall* decision and what the Supreme Court has said about probation in cases.

Just to highlight some things from *Gall*, probation supervision, quote, is not an act of leniency, close quote, but, quote, substantial restriction of freedom. Inherent in the very nature -- and I'm still reading from *Gall* -- the

very nature of probation is that probationers do not enjoy the absolute liberty to which every citizen is entitled. Probationers may not leave the judicial district, move or change jobs without notifying and in some cases receiving permission from their probation officer or the Court.

So some courts -- some district court cases that I've read where a district court judge will say probation is not nothing, meaning that it is a punishment and a substantial restriction on an individual's liberty. The guidelines and the presentence report speaks to this. If the Court was going to consider that type of a sentence, well, there would have to be something to go along with it in terms of some significant community service term that would be incorporated into a probationary sentence.

Your Honor, thank you for hearing me this morning.

THE COURT: All right. Let's hear from the government.

MR. SONGER: Your Honor, may we take just a five-minute recess before the government's argument?

THE COURT: Okay. Personal need?

MR. SONGER: Yes, Your Honor.

THE COURT: Okay.

MR. SONGER: Thank you.

(Respite.)

THE COURT: All right. Be seated.

All right. We'll hear from the government.

MR. SONGER: Thank you, Your Honor.

The government recommends a sentence of ten years or 120 months. That sentence is somewhat below the midpoint of the range calculated by the guidelines. Of course, the statutory maximum sentence here is 120 months based just purely on the offense conduct. As the Court knows, of course, those guidelines are merely advisory, but as the Supreme Court said in *Gall*, they are the starting point and the initial benchmark for any sentence.

And the 3553 factors here weigh strongly in favor of a guideline sentence. We've laid these out in the memo that we filed with the Court, but I would like to highlight several of those factors that we think are most relevant today.

And first and most importantly is the seriousness of the offense. The defendant was convicted of two violent crimes, and these are not just ordinary violent offenses, because Defendant Bryant held a position of public trust. He was entrusted with enormous power and enormous responsibility. He was the supervisor in charge of the Cheatham County Jail the night that these incidents happened. He had previously worked at the Tennessee Department of Corrections. He had been trained. He knew right from wrong. He was not some rookie officer fresh out of the academy. He

had the responsibility to keep people who were in state custody safe from harm and to ensure that the officers who worked under him followed the law and that he set a good example for them.

But he violated that public trust. He purposefully abused his power to torture a teenager in his custody who was tied down and surrounded by officers, and he taunted the teenager while he did it.

Now, that conduct caused two different types of harm that are each very important. The first is the harm to Jordan Norris. The Court heard evidence that Tasers inflict intense, debilitating pain. They burn the skin. When they're used excessively, like they were by Defendant Bryant, they can cause serious cardiac issues, a risk even causing death. Testimony from one of the officers who witnessed the defendant's assaults said that the defendant's tasing made Jordan Norris's skin look like raw hamburger meat.

We heard from Mr. Norris's guardian earlier today that the trauma from this incident did not end when Jordan's wounds started to heal, that his personality was changed, that he started having intense panic attacks. And officers that we heard from in trial confirmed these -- these facts. We heard from a number of officers who testified that they had been exposed to Tasers in training for only a few seconds, and they still considered it some of the most

significant pain they had felt in their lives.

And the defendant knew well what a Taser was capable of. He had been trained. He had been certified. He had been tased himself. He knew it was a tool that caused intense pain and burning. He knew that if he used a Taser for more than 15 seconds -- because he had been trained on this explicitly -- that if he went over 15 seconds, it could cause serious cardiac issues and it could kill a person.

But he tased Jordan anyway. He did it for 50 seconds in the assault at 8:00 and for another 11 seconds in the assault at 10:20.

Now, the defense argued that this Court should grant a downward variance under 5K2.10 of the sentencing guidelines based on the victim's conduct. And I just want to quickly address that, because it's -- that type of variance or departure is clearly not appropriate based on the guidelines that are laid out.

5K2.10 applies only where the victim's conduct contributed significantly to provoking the incident. And we know it didn't contribute significantly here, because in both -- both assaults that the defendant was convicted of, there were a number of other officers around who saw the exact same conduct from Jordan Norris, and none of them responded by using excessive force. Only the defendant did.

We also know that the jury found the defendant

guilty beyond a reasonable doubt of willfully using excessive force. The jury was instructed that they had to find that the defendant intentionally used more force than was reasonable under the circumstances. And they did.

And I'd also direct the Court's attention to a couple of the factors that are spelled out in 5K2.10 for the Court to consider when assessing a request for a downward variance. One is the proportionality of the defendant's response to any provocation that was out there, and we heard testimony in this case from officer after officer that's consistent with what everyone could see in the video, that the defendant's response was grossly disproportionate. Three different officers, Caitlin Marriott, Gary Ola, and Michael Montgomery, each testified in court that at the time the defendant assaulted Jordan Norris, there was no law enforcement justification to tase him at all for even one second. Even one second. And the defendant tased him for 50 seconds at 8:00 and again at 11 seconds at 10:20.

5K2.10 also points the Court to whether the defendant made efforts to prevent the incident from occurring in the first place. And here, not only did the defendant not prevent what happened, at the very end of the night, when officers were preparing to transfer Jordan Norris to the hospital to have him evaluated, after Jordan had calmed down, he had been handcuffed, and placed in shackles, strapped back

into a restraint chair and had been talking calmly with another officer for a full minute and a half, the defendant came back, leaned down, and tased him again, punished him again on the way out the door for 11 more seconds with no discernible provocation whatsoever.

So he absolutely did not take extreme efforts to prevent this from happening. And for those reasons, the downward variance is -- does not apply here.

Your Honor, I also want to just briefly touch on that Jordan Norris was not the only person who was impacted by what happened. As a supervisor in charge of the jail, the defendant put the other officers who were there that night in a difficult position. They were faced with watching their supervisor violate a detainee's constitutional rights. And the defendant compounded that harm by then going to several of those officers and pressuring them not to report what happened, by telling them not to write reports that they were required to submit. Several officers testified that in fact they didn't turn in the reports that they were required to turn in for that reason.

Another officer, Sergeant Ola, stated that he feared retaliation if he reported what the defendant did. And the defendant certainly set a dangerous example for all of those officers. We saw many of them testify on the stand here. They were not happy to be here. They didn't want to

be testifying against their friend and their former supervisor. But they knew what the defendant did was wrong, and they did it anyway.

I think it's particularly notable what happened with Officer Caitlin Marriott. She's a good officer. She's now a supervisor at the Sheriff's office, but she left for a period of time after this incident happened. And when she came back, she said that she was so disturbed by what had happened that night that she couldn't even be around other officers when they tested their Tasers, because just hearing the sound of it would take her back to this traumatic incident when the defendant abused a pretrial detainee.

So, in considering the severity of the offense conduct here, it's important to remember that the defendant's crimes not only inflicted pain on Jordan Norris, but also impacted a number of other officers who tried to do things the right way.

Your Honor, the 3553 factor related to providing deterrence is also important here. And the defendant argued in the memo that was submitted to you that there's no need for specific deterrence in this case because Defendant Bryant has already lost his law enforcement position. But I think what is notable is that the defendant has not expressed any remorse for what happened, even any acknowledgment that he committed crimes.

And this has been a pattern. On the night of the assaults, as we discussed, he didn't report accurately what happened. And, in fact, he pressured other officers to cover up what happened.

Several months later, when he met with the FBI, he again didn't express any remorse for what had happened to Jordan Norris. Instead, he blamed -- when he was asked about the assault at 8:00, he blamed the victim for everything. He said he was just responding to what the victim did.

And then, when he was asked about the assault at 10:20 that night, he just lied and said it didn't even happen. Said he never tased Jordan after Jordan had been handcuffed and shackled. And that was just false.

And even today, in the defendant's sentencing positions, after he's been convicted by the jury on both counts, he continues to try to put the focus on the victim and said it was the victim's fault, the victim who is dead and can't be here to defend himself. He said it was his conduct. He has not acknowledged his own actions. And whether that arises in the future in the context of law enforcement or in some other job the defendant has, he clearly does not acknowledge that he cannot abuse his power. He still thinks he's above the law, and a guideline sentence is necessary to show him that that is not right.

But, in addition to that, Your Honor, there's also

the important need here for more general deterrence to show other law enforcement officers and other public officials that they are held to at least the same standards as other members of society, that they are not above the law, but the same rules apply to them, and if they commit misconduct, they'll be punished.

And then the last 3553 factor I would like to highlight, Your Honor, and it's related to the prior one, is the need to promote the respect for the law. And a guideline sentence is necessary to promote respect, not just for the sentence -- sentencing provisions that the Congress and the U.S. Sentencing Commission have set out, but also respect for the criminal justice system. The defendant, like other law enforcement officers, was trained and entrusted with enormous responsibility. A number of courts, appellate courts -- and we've cited several cases in our memo -- have held that when a public official or law enforcement officer abuses their official authority to commit crimes, that they are held to a higher standard. And that is a factor that weighs in favor of a higher sentence.

And there's good reason for that. Because the system of criminal justice in this country depends upon people believing that when they encounter a law enforcement officer in a uniform, wearing a badge, that they can trust that that officer will follow the law, will act

appropriately, will treat them fairly.

And the defendant eroded trust in that system when he abused his power to commit violent crimes against Jordan Norris. He did a disservice to the countless officers who put on their uniform and try to do things the right way. When the defendant burned the skin off Jordan Norris's body, he simultaneously chipped away at that public trust in the criminal justice system. And he has shown no remorse for doing it.

For those reasons, the government asks that you impose a sentence of ten years, which is the minimum necessary and appropriate.

THE COURT: All right. Thank you.

All right. Mr. Strianse, Mr. Bryant, you all can have the last word here.

MR. STRIANSE: Your Honor, we don't have any additional --

THE COURT: So, Mr. Bryant, I want to make sure that I've invited you to speak to the Court before sentence is imposed.

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you care to do that?

THE DEFENDANT: No, sir.

THE COURT: All right. Any further argument?

MR. STRIANSE: No, Your Honor.

THE COURT: Okay.

All right. So let me first address what's on the record here. And technically, on the record, the defendant, Mr. Bryant has made a request for a departure under 5K2.10. So I want to address that and then I'll go into my analysis of the 3553 factors.

Mr. Bryant requested a departure under 5K2.10 that allows the Court to impose a sentence below the guideline range when a victim's wrongful conduct contributes significantly to provoking the offensive behavior of the defendant. Here, Mr. Bryant requests the Court depart because of the conduct of Jordan Norris on November 5, 2016, when he was in the custody of the Cheatham County Sheriff.

The evidence presented at both trials does show that Mr. Norris's behavior on the evening of November the 5th was bizarre and erratic and continued after November the 5th. On three separate occasions that evening, 6:00 p.m. -- approximately 6:00 p.m., approximately 7:55 and 10:20, Mr. Norris's behavior became unruly, uncooperative, and noncompliant, requiring multiple officers to subdue him through physical force and multiple tasings. At 6:00 p.m., for example, Officer Daniel Bratton tased Norris twice and then Mr. Bryant tased Norris multiple times at 7:55 and 10:21.

Mr. Norris's medical records on November the 5th

confirmed that he was to some extent under the influence of drugs and experiencing some mental challenges. Indeed, after he was taken to the hospital on the night of November 5th, he received a referral to go to the Middle Tennessee facility for psychiatric help.

On all three occasions while he was at the jail, it took multiple officers to make Norris behave and comply with their directions.

And the Court has to consider these, what I've just mentioned, but I also have to consider all the circumstances on the evening of November 5th and those other circumstances include that Mr. Norris was, in fact, confined within the four walls of the jail; two, there were multiple jail officers and correction officials present that night, and that at various times he was, indeed, restrained.

When I look at the total circumstances, his ability to escape from the jail, his ability to do harm to himself, and even his ability to harm others, under the circumstances, was minimum, at best. Indeed, the real danger Norris presented to Bryant and other law enforcement officials was not significant, no matter what Mr. Norris had tried to do. Norris was acting out, and nothing suggests that he did so to provoke Bryant or anyone else. But, more likely than not, his behavior was to some extent the product of the substances found in his body and his mental state.

The case -- this case is not like *U.S. v. Harris*, 293 F.3d 863, Fifth Circuit, 2002, or *Koon v. United States*, 518 U.S. 81, 1996, where the defendants there engaged in combative behavior to avoid arrest. Indeed, Norris had been arrested. He was safely within the confines of the four walls of the jail. Norris was certainly noncooperative with law enforcement orders and directions while in custody, but that's a far -- but that's far from the provocative behavior that's contemplated in 5K2.10 to justify a departure.

So the Court will not exercise its discretion to depart, but I will consider this as a variance. And that argument's been made both here today and in the papers.

All right. So, Mr. Bryant, my responsibility is to impose a sentence that's sufficient but not greater than necessary to accomplish the purposes of the sentencing laws. And that means a sentence that addresses all of the sentencing factors that I'm about to discuss, but one that is tailored to your particular criminal behavior that is not harsh.

Here the government seeks for the reasons stated in the papers and in argument here a sentence -- the maximum sentence that is allowed under the statute of 120 months. And I appreciate in your papers and argument from your counsel you request a variance. And that's -- I've considered all of that. But this Court can't pick and choose

from the 3553(a) factors. I have to consider all of those factors to tailor a sentence that's appropriate.

So I start with the fact you're 42 years old, have a high school diploma. And I note that, undisputed in the record, you've got a very consistent work history that reflects a strong work ethic, which are factors that are important to the Court.

But in applying the factors here, I do think a couple of those factors stand out for the Court. One is, indeed, the offense of conviction and the two counts the jury found you guilty on. And the second, I -- I -- I combined, is the need for just punishment and respect for the law.

And both of those are significant here because you did hold a position of public trust and responsibility. So I turn first to the nature and circumstances of the offense that do reflect a serious and disturbing criminal behavior. The jury found you guilty of Count One and Two, in which you during the period of -- day of November the 5th engaged in unreasonable, inappropriate use of force by misusing a Taser to an inmate on multiple occasions to the same inmate. The inmate was in detention as a pretrial detainee, and the jury determined that that constituted unconstitutional punishment. It did cause bodily injury to the inmate. And importantly to the Court, the offense of conviction touches two of the -- two things that the Court always looks for. And that is,

whether or not it's present -- and here two are present -- one would be violence, and that's certainly here. And the other is the use of a weapon.

At the same time, as I look at the offense of conviction, I also have to look at all of the facts that were present on November the 5th. And important to the Court is that twice you had been trained on the proper application and use of a Taser, both by the Tennessee Department of Correction when you worked for them and Cheatham County Sheriff. So that tells the Court that you knew better.

Next, I have to recognize that, as serious and disturbing as the offense of conviction is, on the record before the Court I see no prior incidents that come close to this. I see -- in fact, I see no prior discipline. This offense, while serious and disturbing and criminal, is isolated in the record before the Court.

And then I also have to look at the specific circumstances that do not justify the criminal behavior but provide context for the events that lead -- that occurred on November the 5th. And that context is important.

Inmate Jordan Norris repeatedly engaged in what I've described charitably as erratic and noncompliant and combative behavior while in jail. He even threatened his own -- he threatened suicide. And on three separate occasions you and other officers needed to control this --

this single inmate. Medical records on November the 5th report that there were some type of drugs in his system and he was experiencing some mental challenges.

And while this provides the Court context and explains the overall total circumstances, which the Court's required to look at, I -- I hasten to note it doesn't justify the criminal behavior. But context matters in determining what's an appropriate sentence.

The Court also notes that others did tasings of Jordan that were not brought to -- that were not determined to be inappropriate. But at a minimum, the jury's verdict states that, Mr. Bryant, you went too far.

And then, finally, in looking at all of the circumstances here, it is an abuse of a public position. Law enforcement officers carry an important role in society. And that was abused when you used too much force with Mr. Norris.

I'm going to turn now to the next factor. And that is the history and characteristics of Mark Bryant. And I'll start with this transition. When I look at the work history and the personal life of Mr. Bryant coming up to November the 4th, it does appear that this -- what occurred on November 5th and the criminal conduct he engaged in on November 5th -- is an aberration from his behavior before November the 5th.

The law enforcement work history of Mr. Norris

[sic] does not reflect anything close to what he did on November the 5th. From 2013 to 2015, he worked for the Tennessee Department of Corrections. He received training in general law enforcement. He went to the academy that the Tennessee Department of Corrections provides. And as I've already noted, he got training on the use -- the proper use of a Taser.

However, from 2015 to -- 2013 to 2015, there's nothing before the Court of any disciplinary actions or any allegations of Mr. Bryant during that period of time.

He then went to the Cheatham County Sheriff's Department from 2015 to 2017. And there again he received training on Taser use. He was -- he was disciplined in 2017 for refusal to obey an order, but on -- but prior to that, in February of 2016, the sheriff determined he was one of the best employees. He received a promotion and he had some limited supervisory authority.

So again, this -- this -- his law enforcement work history, except for November the 5th is -- is -- does not -- does not show a pattern of activity that led to November the 5th.

Finally, I turn to your personal characteristics, which are properly considered under this factor of 3553(a). And specifically I note and credit the testimony of -- and the letters from many family, friends, coworkers, that -- and

your -- and your mother's testimony here today, that you were brought up in a solid, middle class family environment with strong values, that was close knit, and with the support of both parents. There's absolutely nothing in your personal background that suggests any medical or mental issues. There are no substance abuse or other abuse issues that would have impacted you prior to November the 5th.

I do note and read that you repeatedly volunteered and performed good deeds for family and friends, and note that family and friends describe you positively. I've already reflected on your work history and work ethic. And, finally, when I look at your history and characteristics, the Court notes that this is your first felony conviction. There's no other criminal behavior or arrest prior to this, and until November the 5th, 2016, you were -- you were otherwise a law abiding citizen. So that takes care of that factor under 3553(a), which the Court has considered and gives weight to.

But I come back -- I've already discussed two -- one of the factors that stand out for the Court. Now I want to address in combination the factors of respect for the law and punishment.

Respect for the law is a proper factor for the Court to consider under 3553(a). And indeed, as a law enforcement officer, you are a public role model. It's

important for law enforcement, more than anyone else -- or as much as anyone else -- at least to show respect for the law. And that did not occur on November the 5th. It also goes to the public's confidence and belief in -- in law enforcement. And when law enforcement engages in conduct that doesn't show that, then it does require some kind of appropriate just punishment, considering all the factors.

Your actions undercut and compromise public confidence in law enforcement. And the punishment has to consider this and address the need for accountability for your actions on November the 5th.

Now I turn to the issue of deterrence. And that is -- that is important here. There are two aspects, as has been already alluded to here, to deterrence. One is specific deterrence. I need to make sure that Mark Bryant doesn't engage in this again. And the second aspect is general deterrence.

Turning first to specific deterrence, the Court recognizes that your law enforcement career is over. Mr. Bryant will never be in law enforcement again or hold a position in law enforcement due to these actions. I also note for -- in -- on the role and the factor of specific deterrence, that it is a low likelihood that you will reoffend or engage in any other criminal behavior. Your age, your education, your work ethic, the criminal history all

indicate, and the Sentencing Commission's publications, which are many, all support that when people -- when defendants fall in the category of having a high school diploma, first offense, age, it is a very low likelihood that you would reoffend.

However, deterrence has that second element of general deterrence. So while I see a low -- I give less weight to the need for specific deterrence, I give more weight to the need of general deterrence.

First of all, though, the Court notes that the prosecution, the United States, prosecuted this case twice. One, the first trial, as you know, ended in a hung jury, and then the second trial resulted in a conviction. So the Court knows that that public information will be sent to other law enforcement officers and they will know that if they engage in conduct, as you did, that the United States will pursue it vigorously. The Court believes that sends a message of general deterrence.

Secondly, the fact that a jury has -- the fact that your career is over and a jury has made its determination will deter law enforcement, at least make them think going forward of the need to make sure that their force is commensurate with the -- with -- with the behavior they're trying to address. But also, the Court has an opportunity to send a message to other law enforcement of the need to

respect and act appropriate to those who are in pretrial -- detainees, such as Mr. Norris.

Finally, I turn to -- well, next, rather, I turn to the issue of the need to protect the public. I see less need to protect the public from Mr. Bryant because of the things I've just mentioned, that he'll never have such a position of trust with this type of authority going forward, also because of his age, education and work ethic, but perhaps to a lesser extent there may be a need to protect the public along the lines of general deterrence. And I incorporate that analysis here.

I've already talked about the kinds of sentences that are available. I've already stated the sentencing range guideline that's advisory on the Court. And there's no issue here for restitution.

So the Court has -- has considered -- I do recognize the argument made by counsel on behalf of Mr. Bryant regarding the need for caregiver, but the Court notes that Mr. Bryant's family is -- is favored with other family members and many family friends. I do note that -- as well as the argument there's the potential for abuse, but believe that Mr. -- that the Bureau of Prisons will take that into account.

So while I disagree with the government; I think a ten-year sentence would be too harsh for the reasons stated,

I do think probation is out of line because it would not satisfactorily, in this Court's opinion, address the need for general deterrence, just punishment, and respect for the law, along with all the other 3553 factors that I've just discussed.

So for those reasons, I'm going to commit you to the custody of the Attorney General to be imprisoned for a total term of 60 months. I'm going to order that my sentence run concurrent to any state sentence. After you complete that custody sentence, you'll be on supervised release for one year, with the special condition being providing financial records to the probation office.

I will impose all the standard conditions of supervised release, which include not engage in any other unlawful conduct, not have possession of any weapon or any other destructive advice, be truthful to probation, be employed, and reside in a place approved by probation. And all of those standard conditions will be set forth in the judgment.

I will not impose a fine because I determine you're financially unable to pay the fine. But I do impose the special assessment of 200 here. That's $100 for each count of conviction. Neither restitution or forfeiture are an issue in this case.

Finally, I note if my guideline calculation is

wrong, then the Court would have imposed the same sentence under 18 U.S.C., Section 3553(a), and this would be considering all of the factors in 3553(a) as a whole.

Do the parties have any objection to the sentence?

From the government?

MR. SONGER: Just for the record, Your Honor, the government does object to the significant downward variance from the sentencing guidelines.

THE COURT: Okay. For the reasons stated and applying all of the 3553 factors, I think the sentence is appropriate.

Any objection to the sentence?

MR. STRIANSE: No, Your Honor.

THE COURT: So the sentence is hereby imposed.

Now, Mr. Bryant, you have 14 days to file a Notice of Appeal. I'm handing you now a blank form Notice of Appeal that you can use. You can tell your lawyer you want to appeal. You can tell the Clerk of Court you want to appeal. But I urge you to talk to a lawyer before you exercise your appeal rights.

Do you have any questions about your appeal rights?

THE DEFENDANT: No, Your Honor.

THE COURT: Okay. Mr. Strianse, does the -- is the PSR correct, that Mr. Norris [sic] has a January 21 trial

date in state court?

MR. STRIANSE: That's correct, Your Honor.

THE COURT: Okay.

All right. So with that I'm going to allow Mr. Norris [sic] remain released so he can take care of his business.

Also, the Court notes that there's no reason to believe that he is likely to flee or poses a danger to anyone else.

I will go ahead, though, and impose a report date of February 22, 2021.

Mr. Strianse, if things change in the state court proceeding, then I'm sure you know how to let me know.

Also, the Court is cognizant that the world is experiencing a pandemic. So Mr. Strianse, you can bring that to the Court's attention if necessary.

MR. STRIANSE: Yes, sir.

THE COURT: All right. I'm sorry if I misspoke.

All right. Anything else from the government?

MS. MYERS: No, Your Honor.

THE COURT: All right. Mr. Strianse.

MR. STRIANSE: No, Your Honor. Thank you.

THE COURT: Let me just conclude, Mr. Bryant, to say the Court has made its ruling. I think it's appropriate, applying all the factors, but I will end it by saying that

notwithstanding the sentence and the jury verdict to the contrary, it will be up to you on whether or not you use this experience so that other law enforcement officers will learn from it as well. And I hope you'll think about that.

THE DEFENDANT: Thank you, Your Honor.

THE COURT: All right. Thank you.

(Court adjourned.)

REPORTER'S CERTIFICATE

I, Lise S. Matthews, Official Court Reporter for the United States District Court for the Middle District of Tennessee, with offices at Nashville, do hereby certify:

That I reported on the Stenograph machine the proceedings held in open court on November 20, 2020, in the matter of UNITED STATES OF AMERICA v. MARK BRYANT, Case No. 3:18-cr-00144; that said proceedings in connection with the hearing were reduced to typewritten form by me; and that the foregoing transcript (pages 1 through 68) is a true and accurate record of said proceedings.

This the 28th day of December, 2020.

/s/ Lise S. Matthews
LISE S. MATTHEWS, RMR, CRR, CRC
Official Court Reporter